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Attorneys for Defendant LOYA INSURANCE  
COMPANY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MARCO MONTANO,

Plaintiff,

vs.

LOYA INSURANCE COMPANY, FRED  
LOYA INSURANCE COMPANY, and  
JOHN DOES I through X, inclusive,

Defendants.

CASE NO.:

**DEFENDANT'S PETITION FOR REMOVAL**

I.

Defendant LOYA INSURANCE COMPANY now petitions this Court for the removal of the above-entitled case from the District Court of the State of Nevada in and for the County of Clark, where it is now pending, to the United States District Court for the District of Nevada at Las Vegas pursuant to 28 U.S.C. Section 1441(a) et seq.

II.

Plaintiff commenced the above-referenced matter in the Eighth Judicial District Court for the State of Nevada in and for the County of Clark as Case Number A-15-722152-C, Department XXXII on July 24, 2015. Service of Summons and Complaint on the Defendant LOYA INSURANCE COMPANY was made on August 7, 2015, by serving the Las Vegas branch of the Insurance Commissioner's Office. The action is currently pending in the District Court, Clark County, Nevada. A copy of the Plaintiff's Complaint setting forth the claims for relief upon which

1 the action is based is attached hereto along with the appropriate copies of the service of process and  
2 by this reference made a part hereof. See Exhibit "A".

3 III.

4 The Doe Defendants in this action have not been identified and are merely nominal  
5 parties without relevance to the action.

6 IV.

7 This is a civil action for the alleged breach of an implied covenant of good faith and  
8 fair dealing arising out of an insurance contract as well as for breach of the same insurance contract.

9 V.

10 This Court has original jurisdiction under 28 U.S.C. Section 1332(a) based on  
11 diversity of citizenship.

12 VI.

13 At the time of the commencement of this action and since that time, the Plaintiff was  
14 and is an individual citizen and resident of the State of Nevada.

15 VII.

16 The Defendant LOYA INSURANCE COMPANY is duly licensed corporation  
17 incorporated in the State of Texas with their principal places of business in the State of Texas.

18 VIII.

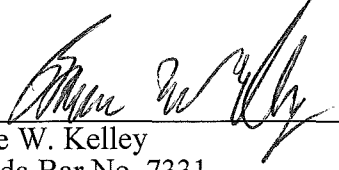
19 That upon information and belief, Defendant LOYA INSURANCE COMPANY  
20 believes the Plaintiff's claims in this matter exceed \$75,000.00 exclusive of interest and costs.

21 IX.

22 This Petition for Removal is timely filed under 28 U.S.C. Section 1446(b).

23 Dated: August 27, 2015

ATKIN WINNER & SHERROD

24  
25   
26 Bruce W. Kelley  
27 Nevada Bar No. 7331  
28 1117 South Rancho Drive  
Las Vegas, Nevada 89102  
Attorneys for Defendant LOYA INSURANCE  
COMPANY

**CERTIFICATE OF SERVICE**

I certify that on this 31<sup>st</sup> day of August, 2015, the foregoing **DEFENDANT'S PETITION FOR REMOVAL** was served on the following by ☐ Electronic Service pursuant to NEFR 9 ☒ Electronic Filing and Service pursuant to NEFR 9 ☐ hand delivery ☐ overnight delivery ☐ fax ☐ fax and mail ☒ mailing by depositing with the U.S. mail in Las Vegas, Nevada, enclosed in a sealed envelope with first class postage prepaid, addressed as follows:

**PLAINTIFF'S COUNSEL**

Victor Lee Miller, Esq.  
LAW OFFICES OF VICTOR LEE MILLER  
806 Buchanan Boulevard, Suite 115-338  
Boulder City, NV 89005  
(702) 877-4779  
(702) 358-6771 - fax  
vmillerlaw@yahoo.com

  
An employee of ATKIN WINNER & SHERROD

**EXHIBIT “A”**

1  
2 COMP

3 VICTOR LEE MILLER, ESQ.

4 Nevada Bar # 002411

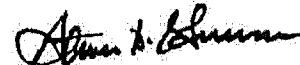
5 806 Buchanan Blvd., Ste. 115-338

6 Boulder City, NV 89005

7 vmillerlaw@yahoo.com

8 (702) 877-4779

9 Attorney for Plaintiff

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CLERK OF THE COURT

10  
11 DISTRICT COURT  
12 CLARK COUNTY, NEVADA

13 MARCO MONTANO )

14 Plaintiff )

15 v. )

CASE NO.: A- 15 - 722152 - C

DEPT NO.:

XXXI I

16 LOYA INSURANCE COMPANY, FRED )

17 LOYA INSURANCE COMPANY, and )

18 JOHN DOES I through X, Inclusive. )

19 Defendants. )

20  
21 COMPLAINT22 COMES NOW, the Plaintiff, MARCO MONTANO in the above-entitled action, by and  
23 through her attorney, VICTOR LEE MILLER, ESQ., and for cause of action states:

## 24 FIRST CAUSE OF ACTION

25 I.

26 That Defendants LOYA INSURANCE COMPANY, FRED LOYA INSURANCE  
27 COMPANY are a foreign insurance corporations, licensed to do business in the State of Nevada.

28 II.

That the identities of Defendants JOHN DOES I through X are unknown at this time and  
may be individuals, partnerships or corporations. Plaintiff alleges that each of the DefendantsLAW OFFICES  
OF  
VICTOR MILLER  
15 S. DECATUR BLVD.  
LAS VEGAS, NV 89107  
(702) 877-4779

1 designated herein as DOE is responsible in some manner for the damages suffered by the  
2 Plaintiff. The Plaintiff requests leave of the Court to amend the Complaint to name the  
3 Defendants specifically when their true identities become known.  
4

5 III.

6 That on or about the 17<sup>th</sup> day of January 2014, Plaintiff MARCO MONTANO was  
7 operating a motor vehicle in the County of Clark, State of Nevada; said motor vehicle was  
8 covered by a policy of automobile insurance with Defendant LOYA INSURANCE COMPANY,  
9 FRED LOYA INSURANCE COMPANY; said policy included underinsured motorist coverage.  
10

11 IV.

12 That on or about the 17<sup>th</sup> day of January 2014, while said policy of insurance was in full  
13 force and effect, Plaintiff MARCO MONTANO was injured in a motor vehicle accident in the  
14 County of Clark, State of Nevada. Plaintiff, MARCO MONTANO was operating an automobile  
15 on Nellis Blvd and Stewart Ave. in said County and State, when underinsured motorist,  
16 SALVADOR GARCIA, negligently change lanes and rear-ended Plaintiff, MARCO  
17 MONTANO.  
18

19 V.

20 That, as a direct and proximate cause of the negligence of an underinsured driver,  
21 Plaintiff suffered serious and severe bodily injuries, and by reason of such injuries, Plaintiff has  
22 suffered and will continue to suffer severe pain. Additionally, Plaintiff required medical  
23 attention, nursing care, and treatment. Plaintiff did expend and will be required to expend large  
24 sums of money for hospitalization and medical and nursing attention and care. Plaintiff reserves  
25 the right to amend this Complaint to provide the exact amount of the special damages at the time  
26 of trial.  
27  
28

1 VI.

2 That all of the aforesaid injuries of Plaintiff are or may be permanent in nature.

3 VII.

4 That at the time of the accident in question, Plaintiff was able bodied and employable, but  
5 because of the injuries suffered as a result of the accident, Plaintiff lost the ability to enjoy  
6 employment and suffered as a result a loss of earning capacity.

7 VIII.

8 That Plaintiff has performed all conditions, terms and covenants required by said policy  
9 to be performed by her.

10 IX.

11 That Plaintiff received his portion of the policy limits from the negligent driver's  
12 insurance company, Kemper Insurance, to compensate him for his personal injuries. That said  
13 policy limits are insufficient compensation for the Plaintiff's injuries and Defendant, pursuant to  
14 the underinsured motorist coverage of its policy of insurance with the Plaintiff, is obligated to  
15 pay whatever damages Plaintiff suffered over and above the policy limits of the underinsured  
16 motorist.

17 X.

18 That it has been necessary for the Plaintiff to hire an attorney to prosecute this action and  
19 Defendant should be required to pay Plaintiff a reasonable attorney's fee.

20 SECOND CAUSE OF ACTION

21 XI.

22 Plaintiff realleges, repeats and reverses the allegations of paragraphs I through X of the  
23 First Cause of Action of this Complaint as if expressly rewritten and set forth herein.

XII.

That said policy of automobile insurance with Defendant LOYA INSURANCE COMPANY, FRED LOYA INSURANCE COMPANY was in effect at the time of the 17<sup>th</sup> day of January 2014, accident, wherein Plaintiff MARCO MONTANO sustained personal injuries. Said policy of insurance included underinsured motorist coverage, wherein Defendant LOYA INSURANCE was obligated to pay for Plaintiff's damages in excess of the policy limits of the underinsured driver.

XIII.

That Plaintiff performed all conditions of the policy required to be performed on her part.

XIV.

That despite Plaintiff's demands, Defendant LOYA INSURANCE COMPANY, FRED LOYA INSURANCE COMPANY has refused to make full payment under the terms of said underinsured motorist coverage per the policy of automobile insurance.

XV.

That Defendant LOYA INSURANCE COMPANY has breached the implied covenant of good faith and fair dealing under the insurance policy by unreasonably denying and delaying payment of Plaintiff's claim without proper cause in that Defendant has not diligently pursued its investigation of Plaintiff's claim.

XVI.

That as a direct and proximate result of Defendant's wrongful failure pay benefits under the policy, Plaintiff has suffered consequential damages for legal expenses in the collection of said amount.



XVII.

That as a direct and proximate result of Defendant's breach of its duty of good faith and fair dealing, Plaintiff has sustained emotional and mental distress and general damages in excess of \$10,000.00.

XVIII.

That the aforementioned acts of the Defendant were willful, malicious, oppressive and fraudulent in that the Defendant's conduct was carried on with a conscious disregard of Plaintiff's rights under the policy, thereby warranting the assessment of exemplary and punitive damages against the Defendant in an amount appropriate to punish the Defendant and set an example for others.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For special and general damages in excess of \$10,000.00;
2. For punitive and exemplary damages in excess of \$10,000.00;
3. For costs, attorney fees, and prejudgment interest; and
4. For such other and further relief as the Court may deem proper in the premises.

DATED this 24<sup>th</sup> day of July 2015.

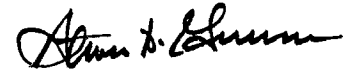
  
VICTOR LEE MILLER, ESQ.

Nevada Bar # 002411  
935 South Decatur Boulevard  
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(702) 877-4779  
Attorney for Plaintiff



CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

MARCO MONTANO

Plaintiff,

v.

LOYA INSURANCE COMPANY, FRED  
LOYA INSURANCE COMPANY, and  
JOHN DOES I through X, Inclusive.

Defendants.

CASE NO.: A-722152

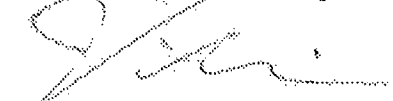
DEPT NO.: XXXII

PROOF OF SERVICE

COMES NOW, Plaintiff, MARCO MONTANO, by and through his attorney of record, VICTOR LEE MILLER, ESQ., and hereby files proof of service of the Complaint and Summons upon Defendant, LOYA INSURANCE COMPANY, FRED LOYA INSURANCE COMPANY., on the 7<sup>th</sup> day of August 2015; proof of which is attached hereto.

DATED this 21<sup>st</sup> day of August 2015.

Respectfully submitted by:



VICTOR LEE MILLER, ESQ.

Nevada Bar #002411

935 S. Decatur Boulevard

Las Vegas, Nevada 89107

Attorney for Plaintiff

LAW OFFICES  
OF  
VICTOR MILLER  
935 S. DECATUR BLVD.  
LAS VEGAS, NV 89107  
(702) 877-4779

BRIAN SANDOVAL  
*Governor*

STATE OF NEVADA

BRUCE H. BRESLOW  
*Director*

AMY L. PARKS, ESQ.  
*Acting Commissioner*



DEPARTMENT OF BUSINESS AND INDUSTRY  
DIVISION OF INSURANCE

2501 East Sahara Avenue, Suite 302  
Las Vegas, Nevada 89104-4137  
(702) 486-4009 • Fax (702) 486-4007  
Website: doi.nv.gov  
Email: insinfo@doi.nv.gov

August 7, 2015

Victor Lee Miller, Esq.  
Attorney at Law  
806 Buchanan Blvd., Ste. 115-338  
Boulder City, NV 89005

RE: Marco Montano vs. Loya Insurance Company, et al,  
District Court, Clark County, Nevada  
Case No. A-15-722152-C

Dear Mr. Miller:

The Division received the service of process documents on August 6, 2015, regarding the above-entitled matter. Service has been completed on Loya Insurance Company this date and enclosed are the following:

1. A copy of our letter to Loya Insurance Company dated August 7, 2015;
2. A certified copy of the Proof of Service dated August 7, 2015; and
3. Your receipt in the amount of \$30.00.

Pursuant to *Nevada Revised Statutes (NRS)* 680A.260, 685A.200, and 685B.050, all documents after initial service of process may be served directly to the party.

If you have any questions regarding this service, please so advise.

Sincerely,

AMY L. PARKS, ESQ.  
Acting Commissioner of Insurance

By:

A handwritten signature in cursive script, appearing to read "Rhonda Kelly", is written over a horizontal line.  
RHONDA KELLY  
Service of Process Clerk

Enclosures

c: Loya Insurance Company

